Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

MARTIN W. MYERS,

Petitioner,

v.

THOMAS C. BURNS, HOITE C. CASTON, K. RICHARD KEELER, PATRICIA SADLER MUNDELIUS, Trustees of the Urantia Foundation, and PHILIP A. ROLNICK, an individual represented to be a newly elected Trustee,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Do the Urantia Foundation Declaration of Trust, its By-Laws, and the Urantia Foundation teachings provide for contractual due process requiring written charges and a fair, due process hearing before a trustee can be removed?

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	2
JURISDICTION	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT:	
THE URANTIA FOUNDATION DECLARATION OF TRUST, ITS BY-LAWS, AND THE URANTIA FOUNDATION TEACHINGS PROVIDE FOR CONTRACTUAL DUE PROCESS REQUIRING WRITTEN CHARGES AND A FAIR, DUE PROCESS HEARING BEFORE A TRUSTEE CAN BE REMOVED	13
CONCLUSION	24
APPENDICES	*infra*

TABLE OF AUTHORITIES

Cases PAGE(S)

American Rubber & Plastic Corp. v. First National Bank of Chicago, 50 Ill.2d 172 (1971) .. 14

Duldulao v. St. Mary of Nazareth Hospital, 115 Ill.2d 482 (1987) 17, 18

Eiche v. Ill. Nat. Bank & Trust Co., 84 Ill.App.3d 535, 406 N.E.2d 210 (1980) 14

First National Bank of Chicago v. Canton Council, 426 N.E.2d 1188 (Ill. 1981) 14

Ford v. Newman, 77 Ill.2d 335, 396 N.E.2d 539 (1979) 13

Hill v. Norfolk & Western Ry. Co., 814 F.2d 1192 (7th Cir. 1987) 23

Kaiser v. Dixon, 127 Ill.App.3d 251 (1984) 17, 18

Matter of Estate of Steward, 134 Ill.App.3d 412, 480 N.E.2d 201 (1985) 13

May v. May, 167 U.S. 309 (1897) 22

Polk v. Board of Trustees of Police Pension Fund of City of Park Ridge, Illinois, 253 Ill.App.3d 525 (1st Dist. 6th Div. 1993) 9, 10, 18, 20, 23

Robinson v. Ada S. McKinley Community Services, 19 F.3d 359 (7th Cir. 1994) 17

Storkan v. Ziska, 406 Ill. 259, 94 N.E.2d 185 (Ill. 1950) 14

Stuart v. Continental Ill. Nat. Bank & Trust, 68 Ill.2d 502, 369 N.E.2d 1262 (1977) 13

Other Authorities

Restatement (Second) of the Law of Trusts, § 187 ..... 11, 21, 22

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The Petitioner respectfully requests this Court to issue a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit, to review that Court's decision and opinion entered on April 9, 1996 (App. A), with a subsequent denial of Petition for Rehearing by the United States Court of Appeals for the Seventh Circuit, on May 6, 1996 (App. B).

OPINIONS BELOW

On April 9, 1996, the United States Court of Appeals for the Seventh Circuit affirmed the judgment of the United States District Court, Northern District of Illinois, Eastern Division, entered on May 9, 1995 (App. C), whereby the United States Court of Appeals for the Seventh Circuit ruled that the United States District Court for the Northern District of Illinois, Eastern Division, appropriately granted the respondents' motion for summary judgment.

The United States Court of Appeals opinion affirming the United States District Court for the Northern District of Illinois, Eastern Division, in granting the respondents' motion for summary judgment was based upon the legal thesis that the settlor's intention was expressed in the Urantia Foundation Declaration of Trust and its By-Laws when the petitioner was removed as trustee from the Urantia foundation without requiring written charges and a fair due process hearing before removal as trustee from the Urantia Foundation.

On May 6, 1996, the United States Court of Appeals denied petitioner's petition for rehearing.

JURISDICTION

1. The decision of the United States Court of Appeals for the Seventh Circuit was entered on April 9, 1996.

2. The denial of the petition for rehearing by the United States Court of Appeals for the Seventh Circuit was entered on May 6, 1996.

3. The Petition for Writ of Certiorari was filed less than 90 days from the denial of the Petition for Rehear-

ing by the United States Court of Appeals for the Seventh Circuit, said denial occurring on May 6, 1996.

4. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

On August 22, 1992, the then trustees of Urantia Foundation, Respondents Hoite C. Caston, K. Richard Keeler, and Patricia Sadler Mundelius, commenced an action to remove the petitioner, Martin W. Myers, as a trustee of Urantia Foundation, wherein petitioner read a written statement, wherein he stated ". . . [B]eing a trustee of Urantia Foundation is a serious responsibility and my ability so to serve has now been brought into question. Because of this, rather than resign, I wish to proceed with the removal proceedings wherein we all shall have full opportunity to review my performance and your objections related to it."

In conjunction with the August 22, 1992, hearing for removal of Martin W. Myers, petitioner, as a trustee of Urantia Foundation, the petitioner was unaware that he was to be confronted with numerous oral charges without being provided the opportunity to respond properly, and he advised the trustees in the presence of Urantia Foundation legal counsel Quin R. Frazer that he did not comprehend the nature of those charges.

In that August 22, 1992 removal hearing, Martin W. Myers, petitioner, requested that he be provided written charges in order to have the fair opportunity to respond to such charges.

On August 29, 1992, the petitioner was provided the opportunity to present a statement to the trustees of Urantia Foundation.

After petitioner presented his written statement, the respondent, K. Richard Keeler, orally asked numerous questions of the petitioner and orally accused the petitioner of numerous infractions, which surprised the petitioner, with an appropriate denial by the petitioner.

After the oral inquisition of the petitioner by the respondent, K. Richard Keeler, the Board of Trustees voted unanimously to remove the petitioner, Martin W. Myers, as a trustee of Urantia Foundation.

On September 28, 1992, the petitioner addressed a letter to respondents Patricia Sadler Mundelius, Thomas C. Burns, Hoite C. Caston, and K. Richard Keeler, contesting the charges as being unfair.

In response to the correspondence of September 28, 1992, Urantia Foundation president, respondent Patricia Sadler Mundelius, directed a letter to the petitioner, dated October 9, 1992, in which she stated to the petitioner that the trustees had determined to remove the petitioner from the Board of Trustees of Urantia Foundation.

On October 12, 1992, the petitioner responded to Urantia Foundation president Mundelius' letter, stating that he did not fully understand the charges, and that it was only fair that "the trustees provide written charges and an opportunity for me seriously to address your concerns."

Prior to October 12, 1992, Martin W. Myers, in a September 4, 1992 correspondence, addressed to the respon-

dents a request for a written list of charges which was ignored.

A written set of charges was never prepared.

In the October 17, 1992 trustees' hearing, Hoite C. Caston orally read new charges to which the petitioner was unprepared to respond and to which he could not reasonably have been expected to have been prepared to respond; nevertheless, petitioner read his prepared statement.

In that October 17, 1992 hearing, there was a vote taken by the trustees unanimously voting to remove the petitioner, Martin W. Myers, as a trustee of Urantia Foundation.

On January 16, 1993, the trustees met again for purposes of removing the petitioner, and the petitioner filed a written response dated January 16, 1993, specifically indicating his objection to the continuation of the removal process as being biased.

In the January 16, 1993 statement, petitioner referred to philosophical concepts and teachings from the Foundation's principal publication, the Urantia Book, which by the terms of the Declaration of Trust Creating Urantia Foundation, Article II, and the By-Laws of Urantia Foundation, Article II, Section 2.4, the trustees are legally and morally bound to defend, to follow, to disseminate, and to not do or permit any act or thing which is inconsistent therewith or in degradation thereof, and which concepts and teachings establish a contractual due process property right requiring a fair and unbiased hearing.

In conjunction with the contractual due process concept requiring a fair and unbiased hearing, the Urantia Book, upon which Urantia Foundation was established, which

governs the trustees in the administration of the government of Urantia Foundation, is replete with teachings advocating that fairness and justice be adhered to in all facets of human endeavor. For example, the Urantia Book provides at page 614:

> There is no error greater than that species of self-deception which leads intelligent beings to crave the exercise of power over other beings for the purpose of depriving these persons of their natural liberties. The golden rule of human fairness cries out against all such fraud, unfairness, selfishness, and unrighteousness. Only true and genuine liberty is compatible with the reign of love and the ministry of mercy.

And the Urantia Book, page 1462:

> Meeting a poor man who had been falsely accused, Jesus went with him before the magistrate and, having been granted special permission to appear in his behalf, made that superb address in the course of which he said: "Justice makes a nation great, and the greater a nation the more solicitous will it be to see that injustice shall not befall even its most humble citizen. Woe upon any nation when only those who possess money and influence can secure ready justice before its courts! It is the sacred duty of a magistrate to acquit the innocent as well as to punish the guilty."

In the January 16, 1993 hearing, there was a vote taken by the trustees unanimously voting to remove the petitioner, Martin W. Myers, as a trustee of Urantia Foundation.

On February 16, 1993, defendant Hoite C. Caston, on behalf of the trustees of Urantia Foundation, directed a letter to petitioner stating, among other things, that petitioner could again present his position at the April 17, 1993 hearing, but further informing petitioner that the

trustees had unequivocally rejected petitioner's position, including petitioner's presentation of the facts, characterization of the trustees' actions, interpretations of the trustees' motives in initiating and carrying out removal proceedings against petitioner, without disclosing to petitioner what the facts, actions, and motivations were, all of which not only denied petitioner the opportunity to have a correct understanding of the pertinent facts, actions and motivations of the trustees, including the charges against him, but also rendered it impossible for petitioner to engage in any meaningful communication on petitioner's behalf concerning the trustees' efforts to remove petitioner as a trustee of Urantia Foundation, thus foreclosing any consideration of the issues and defeating any possibility of a fair hearing.

On April 17, 1993, the trustees again voted unanimously for the last time to remove the petitioner as a trustee of Urantia Foundation.

On May 13, 1993, the petitioner received from Urantia Foundation a Certificate of Removal of Trustee that had been filed with the Cook County clerk's office on April 20, 1993, which certificate states, among other things, notwithstanding the contents of the petitioner's January 16, 1993 written statement, "**. . . that after due deliberation and the exercise of fair and impartial judgment,** by the unanimous vote of all trustees present at said meetings Martin W. Myers was fully and permanently removed as a trustee of Urantia Foundation, **and a vacancy in the number of trustees is declared to exist.**" (emphasis supplied). Said Certificate of Removal of Trustee was dated April 17, 1993, and was signed by Respondents Thomas C. Burns, Hoite C. Caston, K. Richard Keeler, and Patricia Sadler Mundelius, and each

of the signature was notarized by Foundation legal counsel, Quin R. Frazer.

Under Article VII of the Declaration of Trust Creating Urantia Foundation, entitled Trustees and Government of Urantia Foundation, specifically Section 7.5, Removal of Trustee, the pertinent language is quoted: "Upon the execution and recordation of such certificate, a vacancy in the number of trustees shall be deemed to exist."

Philip A. Rolnick was elected a trustee of Urantia Foundation on April 17, 1993, three days before the April 20, 1993, recording of the Certificate of Removal of Trustee of the petitioner as a trustee of Urantia Foundation, with the result that the election of Philip A. Rolnick was invalid and there presently exists a vacancy.

The conduct of the hearings of October 17, 1992, January 16, 1993, and April 17, 1993, asking for the removal of the petitioner as a trustee of Urantia Foundation, violated the Declaration of Trust, the By-Laws, and the Urantia Book of Urantia Foundation, providing for contractual due process requiring a fair and unbiased hearing, as follows:

A. That such a contractual due process hearing exists is substantiated by the only prior removal proceedings in the Foundation's four decades of existence, in which the trustees adhered to their practice of following the Principle of Proper Procedures and specifically and deliberately decided that written charges were deemed to be a part of the due process to be accorded the accused trustee, including a step-by-step process whereby the accused trustee had at least three separate opportunities specifically to answer each charge and to confront his accusers face-to-face, which process was embraced by the then

trustees, significantly including two of the Foundation's original, founding trustees, Mr. William M. Hales and Ms. Edith E. Cook, who unanimously adopted and faithfully followed a written procedure including written charges, guaranteeing the accused full due process of law.

B. That written charges are required is supported by the Urantia Book, at 1990:

> Pilate, being keenly sensitive to the disrespectful manner of the approach of these Jews, was not willing to comply with their demands that Jesus be sentenced to death without a trial. When, therefore, he had waited a few moments for them to present their charges against the prisoner, he turned to them and said: "I will not sentence this man to death without a trial; neither will I consent to examine him until you have presented your charges against him in writing."

C. That, although the respondents do not administer the affairs of a public administrative agency subject to the requirements of due process under the Fifth and Fourteenth Amendments to the United States Constitution, nevertheless, under the Declaration of Trust, By-Laws, and the Urantia Book of Urantia Foundation, providing for contractual due process, such due process requires a fair trial and a fair tribunal, principles recognized in constitutional due process hearings governing public administrative agencies, *Polk v. Board of Trustees of Police Pension Fund of City of Park Ridge, Illinois*, First District, Sixth Division, September 10, 1993.

D. That, although the Respondents do not administer the affairs of a public administrative agency, subject to the requirements of due process under the Fifth and

Fourteenth Amendments to the United Stated Constitution, nevertheless, under the Declaration of Trust, By-Laws, and the Urantia Book of the Urantia Foundation, providing for contractual due process, such due process prohibits persons performing quasi-prosecutorial investigative functions from being members of a decision-making body, principles recognized in constitutional due process hearings governing public administrative agencies, *Polk v. Board of Trustees of Police Pension Fund of City of Park Ridge, Illinois.*

E. That the petitioner was denied a due process hearing, in that the respondents performed quasi-prosecutorial or investigative functions while also being members of the decision-making body to terminate the petitioner as a trustee, was stated by the petitioner, in the letter dated January 16, 1993, paragraph 3:

> One would expect that fiduciaries, such as the majority, would be eager to avoid even the appearance of these and other improprieties by insisting upon the highest standards of conduct and conscientiously adhering to basic principles of good faith behavior. This would seem especially so, since the majority sits as accuser, prosecutor, judge and jury, and would, therefore, want to take special precautions to insure fairness throughout the removal proceedings. But its actions have been to the contrary. By bringing false charges and failing to provide Martin with the basic protections of due process, the majority has repudiated fairness and equity and renounced its accountability to reasonable standards of conduct in its administration of the affairs of Urantia Foundation. In so doing, the majority has substituted license in the place of liberty, and has thus put itself in direct contravention of the teachings of the Urantia Book. Here, for the majority, the ends justifies the means.

The conduct of the hearings of October 17, 1992, January 16, 1993, and April 17, 1993, was in violation of the fiduciary and other high administrative standards of conduct and behavior imposed upon and required of the respondents by the creators of the Declaration of Trust Creating Urantia Foundation, as exemplified in and by Article II, Objects, and Article VII, Trustees and Government of Urantia Foundation, in and by Article II of the By-Laws of Urantia Foundation, and in and by the teachings of the Urantia Book, for the fair, honest, and equitable administration of the affairs of Urantia Foundation.

G. That, under §187, j, of Restatement (Second) of the Law of Trusts, it provides that trustees' decisions are subject to the review of a court for dishonest action, bad faith, unreasonable and arbitrary exercise of judgment, or improper motive, and thus, the respondents are to be held accountable by the court for their arbitrary and capricious exercise of discretion, bad faith, and their unreasonable judgment and improper motives in denying petitioner a contractual due process hearing as required by the intent of the creators of the Declaration of Trust Creating Urantia Foundation as exemplified in and by Article II, Objects, and Article VII, Trustees and Government of Urantia Foundation, in and by Article II of the By-Laws of Urantia Foundation, and in and by the teachings of the Urantia Book.

The actions of the trustees of Urantia Foundation of October 17, 1992, January 16, 1993, and April 17, 1993, to remove Martin W. Myers as a trustee of Urantia Foundation, were a flagrant and willful abuse of trust, being arbitrary, capricious, unreasonable, and biased when they denied the petitioner a contractual due process property right hearing consisting of written charges

and confrontation of witnesses for purposes of cross-examination, in accordance with contractual due process to which bias the petitioner referred in his letter dated January 16, 1993, page 2, paragraph 1:

> Not only does the majority proceed unfairly against Martin, impugning his character and dismissing his significant experience, but also, it does so hypocritically, knowingly harboring one of its own who has admitted actions in writing which show his unworthiness to continue to be a trustee, especially his unworthiness to sit in judgment on Martin. Martin requested this trustee's resignation immediately before the majority commenced to remove Martin, but this trustee sat—and still sits—as one of Martin's accusers. And the actions and behavior of the remainder of the majority are also subject to criticism. With Martin's performance as a trustee—let alone his qualifications—equal or superior to that of the majority, the majority's actions are all the more deceitful. It holds Martin to a higher standard of conduct and behavior than that which it has chosen to apply to itself.

The petitioner's reference to the bias relating to the unworthiness of one of the trustees to continue sitting as a trustee related to a certain document (the "Keeler document") given to petitioner on August 21, 1992, in good faith, independently of its author trustee Keeler, said document consisting of 22 typewritten pages containing information about Mr. Keeler, Mr. Keeler's 4-year-old daughter, Liberty, his daughter's mother, Mr. Keeler's former wife and her daughter, and their relationships with one another, which document Urantia Foundation demanded petitioner return.

In a separate proceedings that had been pending in the Circuit Court of Cook County, Illinois, in the matter en-

titled K. Richard Keeler, Plaintiff, vs. Martin W. Myers and Diane G. Elder, Defendants, 93 CH 3484, the Circuit Court ordered the petitioner, herein, to surrender the Keeler document to Keeler although the petitioner considered the document as a matter of public concern that should not have been surrendered.

REASONS FOR GRANTING THE WRIT

THE URANTIA FOUNDATION DECLARATION OF TRUST, ITS BY-LAWS, AND THE URANTIA FOUNDATION TEACHINGS PROVIDE FOR CONTRACTUAL DUE PROCESS REQUIRING WRITTEN CHARGES AND A FAIR, DUE PROCESS HEARING BEFORE A TRUSTEE CAN BE REMOVED.

In the United District Court for the Northern District of Illinois, Eastern Division, opinion, as affirmed by the United States Court of Appeals for the Seventh Circuit, the positions of both courts in affirming the respondents' motion for summary judgment is that the intention of the settlor, in this instance, as expressed in the Declaration of Trust and the By-Laws, did not require written charges nor a procedural due process hearing.

Basically, both courts' position is that any trustee can be removed without cause, with the consequence that no written charges and due process hearing are required.

There is no question that the limits of the trustees' powers are determined by the instrument which creates the trust. *Stuart v. Continental Ill. Nat. Bank & Trust*, 68 Ill.2d 502, 369 N.E.2d 1262, 1271 (1977), *Ford v. Newman*, 77 Ill.2d 335, 396 N.E.2d 539, 540 (1979), *Matter of Estate of Steward*, 134 Ill.App.3d 412, 480 N.E.2d 201,

203 (1985), *First National Bank of Chicago v. Canton Council*, 426 N.E.2d 1188, 1201 (Ill. 1981), *Storkan v. Ziska*, 406 Ill. 259, 94 N.E.2d 185, 189 (Ill. 1950), and *Eiche v. Ill. Nat. Bank & Trust Co.*, 84 Ill.App.3d 535, 406 N.E.2d 210, 212 (1980).

Therefore, the intention of a settlor of a trust is to be sought in the meaning of the language used as made manifest by various provisions of the instrument considered as a whole. *American Rubber & Plastic Corp. v. First National Bank of Chicago*, 50 Ill.2d 172 (1971), at 174.

The Declaration of Trust Creating Urantia Foundation describes the principal object of the trust in Article II as follows:

> 2.1 Principal Object: The object for which this Foundation is created is the promotion, improvement, and expansion *among the peoples of the world of the comprehension and understanding* of Cosmology and the relation of the planet on which we live to the Universe, of the genesis and destiny of Man and his relation to God, and *of the true teachings of Jesus Christ*; and for the inculcation and encouragement of the realization and appreciation of the Fatherhood of God and the Brotherhood of Man—in order to increase and enhance the comfort, happiness, and well being of Man, *as an individual and as a member of society*, through the fostering of a religion, a philosophy, and a cosmology which are commensurate with Man's intellectual and cultural development.
>
> 2.2 Concordant Objects: The concordant objects for which the Foundation is created are to perpetually preserve inviolate the text of the Urantia Book and *to disseminate the principles, teachings, and doctrines of the Urantia Book*. (Emphasis supplied.)

In conjunction with the object of the Declaration of Trust, the following By-Laws of Urantia Foundation, Article II, governing the Board of Trustees, are quoted:

> 2.5. *Qualification for Trustees*: To qualify for the office of Trustee, a person must have read the Urantia Book, be familiar with the teachings thereof, and sincerely and truly advocate the dissemination of such teachings. He shall execute the certificate accepting the duties and responsibilities of Trustee as set forth in the Certificate of Election of Trustee, and shall subscribe to the acceptance of these Bylaws.
>
> 2.4. *Removal of Trustees*: When in the opinion of a majority of the Trustees, any Trustee . . . has done or permitted any act or thing which is inconsistent with or in degradation of the teaching of the Urantia Book, . . . then the Trustees shall cast a ballot on the question of whether or not such Trustee should be removed.

Relative to By-Laws 2.4., Removal of Trustees, under Certificate of Removal of Trustee, the following pertinent language is quoted:

> Whereas, under the terms and provisions of said Declaration of Trust a Trustee may be removed by the unanimous vote in favor of such removal by all the remaining Trustees:
>
> Now, Therefore, the undersigned being all the presently qualified and acting Trustees of Urantia Foundation, except the Trustee hereby removed, do hereby certify that pursuant to said Declaration of Trust a meeting of said Trustees was duly and legally held on (*insert dates of meetings*) and at which meetings the following Trustees were present, to-wit:
>
> (Insert names of Trustees present)

> that after due deliberation and the exercise of fair and impartial judgment, by the unanimous vote of all Trustees present at said meeting (*name of Trustee removed*) was fully and permanently removed as a Trustee of Urantia Foundation, and a vacancy in the number of Trustees is declared to exist.

At the same time, with reference to the analysis of the provisions of the Declaration of Trust and By-Laws as stated herein, two other significant sections that must be addressed are Article VII, 7.5 and 7.7, of the Declaration of Trust Creating Urantia Foundation:

> 7.5 REMOVAL OF TRUSTEE: Any Trustee may be removed for any reason by a unanimous vote of the remaining Trustees, and upon the casting of such a unanimous vote of the remaining Trustees, they shall thereupon execute a certificate under the hands and seals of said remaining Trustees certifying to the casting of such vote and to the removal of such Trustee, and the same shall be filed for record as provided in paragraph 9.1. Upon the execution and recordation of such certificate, a vacancy in the number of Trustees shall be deemed to exist.
>
> 7.7. Action by Majority: Except as otherwise provided in this Declaration of Trust, the Trustees shall have the powers to act by a majority of their number as from time to time constituted, and the Trustees shall keep and preserve full minutes and other records of all their meetings, proceedings, and acts, and any Trustee dissenting from the majority of the Trustees shall have the right to have his dissent noted in such minutes or other record.

From the analyses of the provisions of the Declaration of Trust and the By-Laws of the Urantia Foundation, it is the contention of the petitioner that he has a contractual due process right to a fair and impartial hearing, re-

quiring written charges, based upon the Declaration of Trust Creating Urantia Foundation, Article II, 2.1, Principal Object, and 2.2, Concordant Objects, which provisions provide that the object for which the Urantia Foundation was created was to preserve perpetually the textbook of the Urantia Book, which textbook relates to the true teachings of Jesus Christ, which requires written charges.

In conjunction with 7.5, which merely requires that the majority of trustees vote for removal without even having any reason, that Declaration of Trust must be read with 2.1 and 2.2, the objects of the Urantia Foundation, and 7.7, which requires full record keeping, and 2.4 of the By-laws, which requires that there be a fair and impartial deliberation before the removal of a trustee.

Most importantly, By-Law 2.5 of Article II of the Urantia Foundation requires that a qualified trustee accept the duties and responsibilities of a trustee by having read the Urantia Book, being familiar with the teachings thereof, and by disseminating those teachings.

In defiance of Article II, By-Law 2.5, respondent trustees disregarded the teachings of the Urantia Book, which referred to written charges as alleged by the petitioner.

As a consequence, the petitioner has alleged a contractual due process right, which due process right was violated specifically by not providing the petitioner with written charges nor a fair due process hearing before removal, pursuant to *Duldulao v. St. Mary of Nazareth Hospital*, 115 Ill.2d 482 (1987), at 486-489, *Kaiser v. Dixon*, 127 Ill.App.3d 251 (1984), *Robinson v. Ada S. McKinley Community Services*, 19 F.3d 359 (7th Cir. 1994),

and *Polk v. Board of Trustees of Police Pension Fund of City of Park Ridge, Illinois*, 253 Ill.App.3d 525 (1st Dist. 6th Div. 1993), at 541-542.

In *Polk v. Board of Trustees of Police Pension Fund of City of Park Ridge, Illinois*, the Illinois Appellate Court concerned itself with a public agency, wherein the Illinois Appellate Court ruled that an administrative agency has to provide a fair and impartial hearing, and that officers conducting the hearing cannot be performing quasi-prosecutorial, investigative functions.

It was the position of the petitioner in the proceedings pending before the United States District Court for the Northern District of Illinois, Eastern Division, and the United States Court of Appeals for the Seventh Circuit, that the concepts advanced by the *Polk* Appellate Court decision governing public administrative agencies, by analogy, also should apply to private administrative agencies that are governed by contractual due process.

That such an analogy has merit is supported by *Duldulao v. St. Mary of Nazareth Hospital*, wherein the Illinois Supreme Court applied contractual due process concept of *Kaiser v. Dixon*, involving public employee, as being applicable to a private employee, Duldulao, as an employee of St. Mary of Nazareth Hospital.

Because of the above analysis, the respondents, as hearing officers, could not properly perform quasi-prosecutorial investigative functions. Nevertheless, they did perform such quasi-prosecutorial investigative functions, as is substantiated by Hoite C. Caston's affidavit, pages 9, 10, and 11, attached to the respondent's motion for summary judgment, referring to the oral complaints, which the respondents admittedly refused to reduce to written charges.

Those oral charges reflect that the respondents, as decision makers, conducted a quasi-prosecutorial investigation, as is reflected in Hoite C. Caston's affidavit, particularly those oral charges stated on page 10 and enumerated herein:

1. At the same time, you have driven a wedge of suspicion and mistrust between the Trustees and the Foundation staff by openly discussing the Trustees individually and as a group in unflattering, profane and obscene terms.
2. Likewise, you have driven a wedge between the staff and ACT (The Advisory Committee to the Trustees) by making unfounded accusations of disloyalty against most of its members, sowing seeds of distrust and suspicion.
3. You have also attempted to drive a wedge between the Trustees and ACT, the Foundation's most loyal and influential supporters, by saying "ACT is history" and unilaterally indicating to the ACT chairperson that the committee was "fired."
4. Potentially most damaging of all, your conduct has driven a wedge between the readership and the Foundation by imposing your personal loyalty test in which those not in 100% agreement with us are against us, thus further alienating potential supporters by openly expressing distrust and suspicion in letters and phone calls that are often marked by angry outbursts. This has not only discouraged reader support but has also created growing animosity toward the Foundation.

Examining closely the above oral charges, wherein there are allegations about "openly discussing the Trustees . . . in unflattering, profane and obscene terms," "making unfounded accusations of disloyalty against most of its members, "saying 'ACT is history'," openly ex-

pressing distrust and suspicion in letters and phone calls," these would be considered hearsay, unless subjected to an evidentiary hearing consisting of cross-examination, and therefore are not admissible in an administrative public proceeding (*Polk*, at 536).

That the principle of hearsay would apply in this matter is supported by an affidavit that Hoite C. Caston had attached in the respondents' motion for summary judgment before the United States District Court for the Northern District of Illinois, Eastern Division, wherein Hoite C. Caston submitted an affidavit with an Exhibit B, 19-3, wherein in the last paragraph of that exhibit, Hoite C. Caston emphasizes the requirement of evidence to support charges against any person in conjunction with the principles of the Urantia Book, which certainly would not involve the concept of hearsay.

As in *Polk* (at 540-541), wherein Polk's legal counsel objected to the presence of two trustees of the pension board, based upon prejudice, similarly, in this matter, the petitioner objected to Keeler's presence as a hearing officer because of prejudice against the petitioner concerning the 22-page Keeler document. In *Polk*, the court ruled that the two pension hearing police officers should have recused themselves on the basis that "a fair trial and a fair tribunal is a basic requirement of due process."

In this instance, by the *Polk* analogy, Keeler should have been recused as a hearing officer in order to achieve "a fair trial and a fair tribunal," which principle of due process is reflected in the policy of the Declaration of Trust, its By-Laws, and the Urantia Foundation teachings.

Such a principle of fair trial and fair tribunal is acknowledged in the previously addressed Hoite C. Caston affidavit, with an Exhibit B, 19-1, paragraphs 3 and 5, bearing the signature of Hoite C. Caston, which, when referring to another matter involving the petitioner, states:

> To say that I am greatly saddened and deeply disturbed by your choice of action is an understatement. As Martin's friend, it hurts me to see the personal pain caused him by this patently unfair and distorted assault on his character and, through him, the integrity and independence of the Urantia Foundation. As a trustee of Urantia Foundation and a member of Urantia Brotherhood, I am outraged at this perversion of justice by the Executive Committee. I cannot see how anyone could, in good conscience, characterize as "thoughtful deliberation" the actions of a self-styled inquisition that was convened under lynch mob mentality; that considered unfounded rumors, personal assumptions, hearsay, and one-sided testimony as "evidence"; and that took it upon itself to be prosecutor, judge, and jury with a predetermined verdict of "guilty as charged." Such behavior would not even meet the most minimal standards of the Brotherhood's own removal procedure, much less the spiritual standards you seek to impose on Martin's actions.
>
> Where was there any sense of fairness in this whole process?
>
> Who were Martin's accusers and what specifically did they say?

Based upon Hoite C. Caston's remarks as found in his affidavit, with Exhibit B, 19-1, paragraphs 3 and 5, Hoite C. Caston recognizes that, under § 187, j, of Restatement (Second) of the Law of Trusts, trustees' decision are subject to the review of a court for dishonest action, bad

faith, unreasonable and arbitrary exercise of judgment, or improper motive.

Contrary to the conclusions of the United States District Court for the Northern District of Illinois, Eastern Division, and the United States Court of Appeals for the Seventh Circuit, the trustees' prerogatives under paragraph 7 are not without limitation, pursuant to the cited language of § 187, j, Restatement (Second) of the Law of Trusts.

Also, the Restatement (Second) of the Law of Trusts provides:

> It is true that the good faith requirement may be waived by the words of the trust, *but the words are interpreted narrowly.* Words found to waive the reasonableness standard are "absolute" or "unlimited" or "uncontrolled" discretion. Rest. 2d Trust § 187, comment j, pg. 408. (Emphasis supplied.)

Article VII makes no such waiver, and the trustees in exercising the removal power are held to the presumed high standards of reasonableness, reasoned judgment, loyalty, good faith, and proper motive—all consistent with, and in fulfillment of, the inspired precepts of Article II, including the consummate teachings of the Urantia Book. The court will control the trustees if they abuse their fiduciary powers. *May v. May*, 167 U.S. 309 (1897). *See also* Rest. 2d Trusts § 187, comment g, p. 404.

Certainly, the respondents, herein, abused their power by not affording the petitioner written charges as provided by the teachings of the Urantia Foundation.

Furthermore, K. Richard Keeler should not have remained on the board because there was a serious concern

about whether he could be impartial or not, and pursuant to the concepts of the Illinois Appellate Court decision of *Polk*, Keeler should have been either recused or removed by the other trustees.

Additionally, the trustees could not have served both as investigators and hearing officers, based upon the Illinois Appellate Court *Polk* decision.

Granted, the *Polk* decision concerned a public agency governing public employees, nevertheless the concept advanced by the petitioner was recognized as a valid one, pursuant to the United States District Court for the Northern District of Illinois, Eastern Division, decision, page 10, wherein the court denied the respondents' motion for judgment on the pleadings by recognizing that the petitioner had advanced the legal proposition "the Declaration of Trust incorporates many of the procedural safeguards embodied in the due process clause, and that the defendants' failure to abide by these procedures in ousting him as a trustee constituted a breach of the trust. (Amended Compl., ¶ 25)."

Moreover, the concept of contractual due process has previously been recognized in the Seventh Circuit in reference thereto in *Hill v. Norfolk & Western Ry. Co.*, 814 F.2d 1192 (7th Cir. 1987), at 1198.

Therefore, the United States District Court for the Northern District of Illinois, Eastern Division, decision, and the United States Court of Appeals for the Seventh Circuit decision, in affirming the lower court's decision for granting a summary judgment, were inappropriate as there is a genuine issue of material fact, and the respondents are not entitled to a summary judgment as a matter of law.

CONCLUSION

For the above-stated reasons, this Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

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